IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 130 OF 1994.

1. The Municipal Corporation
of Greater Bombay, having
their head office at Mahapalika
Marg, Bombay 400 001.

2. The Superintendent,
office of the Superintendent
Secondary Schools, Municipal
Corporation of Greater Bombay,
Hindu Colony, Dadar,
Mumbai 400 014. ... Petitioners

Versus.

1. Shri Babaji Sadanand Achrekar
an Indian Inhabitant, residing
at 16/383, Tata Colony, Bandra
East, Bombay 400 051.

2. Shri G.S.Baj,
Member Industrial Court, Bombay,
having his office at Arun Chambers,
Tardeo, Bombay 400 034. ... Respondents.

Ms.N.V.Sanglikar with Shri Vinod Mahadik for the Petitioners.

Shri Kiran Bapat for the Respondents.

CORAM : SMT.RANJANA DESAI &
ABHAY S. OKA, JJ.

DATED : 17th November, 2005.

ORAL JUDGMENT.: (per Smt.Ranjana Desai,J.)

1. The petitioners the Municipal Corporation for Greater Bombay ("the Municipal Corporation" for short) and the Superintendent of the Secondary Schools of Municipal Corporation of Greater Bombay, petitioners 1 and 2 respectively, have challenged in this petition the

judgment and order dated 22nd September 1993 passed by the Industrial Court, Bombay, in Complaint (ULP) No.297 of 1986.

2. Briefly stated, the facts of the case are as under:

. According to respondent 1 he was working as a peon in the Secondary School run by the Municipal Corporation known as Globe Mill Passage Municipal Secondary School. It is his case that he should be paid in the payscale on par with the peons working in the Head Office of the Municipal Corporation situated at Mahapalika Marg, Mumbai. The peons working in the Head Office are also the employees of the Municipal Corporation. Repeated requests made by respondent 1 for parity were not attended to. According to respondent 1, petitioner 1 is paying more wages to the peons employed in the head office. His case is that he is being paid Rs.300/- less than the peons working in the Head Office. His further case is that petitioner 1 has not implemented the agreement arrived at between petitioner 1 and the Municipal Mazdoor Union in respect of the service conditions of the employees including the peons employed with petitioner 1. On these allegations a complaint came to be filed under Items 5 and 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act,

1971 (hereinafter referred to as "MRTU & PULP Act") against the petitioners. Respondent 1 inter alia prayed that he may be paid wages on par with the peons employed at the Head Office by petitioner 1 and that necessary directions be issued to the petitioners to implement the award, settlement, agreement arrived at between petitioner 1 and the Municipal Mazdoor Union.

3. The Industrial Court came to the conclusion that respondent 1 had proved that the petitioners have committed unfair labour practice as contemplated under Items 5 and 9 of Schedule IV of the MRTU & PULP Act and that respondent 1 had proved that he is entitled to the wages on par with the wages paid to the employees at the Head Office of the petitioners till date. The Industrial Court declared that the petitioners had engaged in unfair labour practices under Items 5 and 9 of Schedule IV of the MRTU & PULP Act. The Industrial Court directed the petitioners to pay all the arrears of wages to respondent 1 considering the difference between the wages paid to the peons employed in the Head Office and the actual wages paid to the complainant from the date of his appointment. The Industrial Court further directed that the settlements/agreements/awards arrived at between the petitioners and the Municipal Mazdoor Union in respect of the service conditions of peons employed by petitioner 1 be implemented in the case of respondent 1 also with retrospective effect from the

respective dates of such settlements/agreements. It is this order which is challenged in this petition.

4. We have heard at considerable length Ms.Sanglikar learned counsel appearing for the petitioners and Shri Bapat learned counsel appearing for respondent 1. Ms.Sanglikar has drawn our attention to the judgment of the Division Bench of this Court (Coram: P.S.Patankar and D.B.Bhosale, JJ) in Writ petition No.3879 of 1988 dated 5th February 2002 wherein this Court has considered the question involved in this petition. She submitted that this Court has after considering the relevant case law come to a conclusion that non-teaching staff working in the secondary schools of the Municipal Corporation is not on par with the non-teaching staff of the primary schools or the staff in other departments of the Municipal Corporation. The learned Counsel for the petitioners urged that the present case is clearly covered by this judgment. Shri Bapat on the other hand contended that the claim of respondent 1 is also based on the agreement arrived at between petitioner 1 and the Municipal Mazdoor Union and there is sufficient indication in the record that petitioner 1 has not abided by the agreement and therefore, to that extent this Court must give relief to respondent 1.

5. We are not impressed by the submission of the

learned Counsel for respondent 1. In our considered opinion, the present case is clearly covered by the judgment of this Court in Writ Petition No.3879 of 1988. In that case, the first petitioner was a trade union representing non-teaching staff working in the municipal secondary school of the Municipal Corporation. Petitioners 2 to 4 were its office-bearers. The petitioners had prayed that the Municipal Corporation be directed to treat the non-teaching staff of the secondary schools run by the Municipal Corporation as municipal servants and to give them service conditions, benefits and privileges applicable to other municipal employees. This court held that from day one the non-teaching staff in the secondary schools is treated as forming a separate cadre. The service conditions of the said staff are governed by the secondary school code. It is a class by itself. This court further observed that the pay scales, the method of recruitment, promotion and channel of promotion of the non-teaching staff of the secondary schools differ from other employees of the Municipal Corporation. After considering all aspects of the matter and relevant case law and particularly the judgment of the Supreme Court in **Air India v/s. Nargesh Meerza & ors. (1981) 4 SCC 335,** this court concluded as under:

> "The non-teaching staff working in the municipal secondary schools are governed by

> the Secondary Schools Code. From day one, they have been treated separately in case of pay-scales, recruitment, channel and method of promotion, etc. They are given the pay-scales and other benefits payable in case of other private secondary schools, recognised and aided by the Government. The non-teaching staff has accepted the Fifth Pay Commission pay-scales as adopted by the State. Therefore, they form a distinct class along with such teachers and cannot be equated with the non-teaching staff in the primary schools of the Corporation or other departmental employees."

This Court also held that it is not possible to hold that the non-teaching staff in the secondary schools is given any discriminatory treatment by the Municipal Corporation on the principle of equal pay for equal work.

6. In view of this, we are unable to agree with the view taken by the Industrial Court that respondent 1 is entitled to wages on par with the peons working in the Head Office. So far as the contention of Shri Bapat that the petitioner 1 has not abided by the settlement arrived at between the petitioner 1 and the Municipal Mazdoor Union is concerned, the impugned order does not

indicate that there is evidence of any particular settlement being applicable to respondent 1. This contention is vague. In view of this there is no question of this court directing implementation of any settlement. We therefore, allow the petition in terms of prayer clause (a). The original complaint filed by respondent 1 is dismissed. Petition is disposed of in the aforestated terms.

(Smt.Ranjana Desai, J.)

(Abhay S.Oka, J.)